

Remarks:

Amendments

The amendment to claim 4 is supported by the drawings. It is also expressly supported by the features set forth in claim 14, lines 4-7.

The amendments to claim 14 are to clarify the original intent which specifies the non-axially rotating covering sleeve and is supported by the disclosure in Figs. 10, 11, 12 and 13.

New claim 16 recites the feature set forth in the penultimate paragraph of claim 4 (namely the cleaning blade), but depends from claim 14.

New claim 17 recites the feature set forth in the last paragraph of claim 14 (namely the non-axially rotating covering sleeve), but depends from claim 4. Thus, each of claims 16 and 17 links the embodiments of Groups I and II. The embodiment of claims 16 and 17 which utilizes the combination of the covering sleeve (the subject of original claim 14) together with a cleaning blade (the subject of original claim 4) is the subject of Figs. 12 and 13.

Response to Restriction Requirement

The restriction requirement is set forth as follows:

- I. Claims 1 and 4-13, drawn to a traveling rolling digger comprising a shaft, cleaning blade and moving means and

its method of use, classified in class 175, subclass 313.

- II. Claims 2 and 14, drawn to a traveling rolling digger comprising a shaft, tilling blade and sleeve and its method of use, classified in class 175, subclass 314.
- III. Claims 3 and 15, drawn to a traveling rolling digger comprising a shaft, cutting blade, and tilling blade or auger flight and its method of use, classified in class 175, subclass 213.

Provisional Election with Traverse

The subject matter identified as Group II above is provisionally elected with traverse. Claims 2, 14 and new claims 16 and 17 are directed to the provisionally elected subject matter.

Traverse of Restriction Requirement

I. It is clear from the wording of the reasons set forth on pages 1, 2 and 3 of said Official Action that the restriction requirement is under 37 CFR 1.141 and 1.142. The Official Action includes three references to MPEP § 806.05(d) which is part of Chapter 800 "Restriction in Applications Filed Under 35 U.S.C. 111;...". The present application is not an application under 35 U.S.C. 111. Instead, it is the United States national phase of an international application filed under 35 U.S.C. 371. The

restriction requirement practice set forth in the Official Action is respectfully traversed on the ground that it is not applicable to the present application which was filed under 35 U.S.C. 371. The present application is governed by 37 CFR 1.475 and 1.499 which relate to unity of invention. See also MPEP 1893.03(d).

II. The original claims in the present United States national phase application are identical to the claims in the international application PCT/US03/10491 which was processed in the United States as the Receiving Office. The USPTO carried out the international search applying the PCT criteria. A copy of the three-page international search report in PCT/US03/10491 is enclosed herewith. There was no objection that unity of invention is lacking. (If there was an objection to unity of invention as being lacking, an appropriate notation would have been made on page 1, Paragraph No. 3, and a Box II should have been provided.) It is respectfully submitted that the foregoing evidences that the claims in the present application have been considered by the USPTO relative to the issue of unity of invention and a decision was made that the present claims do not lack unity of invention.

III. The present restriction requirement as between Group I and Group II is further respectfully traversed on the ground the Group I claims and the Group II claims are linked by linking claims 16 and 17. Examination of claim 16 (and also claim 17

involves the examination of the subject matter of Groups I and II.

Reconsideration and withdrawal of the restriction requirement is requested. Examination of all of the claims is solicited.

Respectfully submitted,



HERBERT GOODMAN
Reg. No. 17,081

Frishauf, Holtz, Goodman
& Chick, P.C.
220 Fifth Ave., 16th floor
New York, NY 10001-7708
Telephone: (212) 319-4900
Facsimile: (212) 319-5101

HG/lpv

Encs: Petition for Extension of Time;
International Search Report PCT/ISA/210 in PCT/US03/10491
(3 pages)